

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2009-0616-11	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2009-1216-03EE
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For use by Office of Administrative Law (OAL) only

2009 DEC 16 PM 2:33

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Social Services

AGENCY FILE NUMBER (if any)

ORD #0309-03

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Title IV-E Foster Care Overpayment Regulations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2009-0619-07E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND Sections 11-425, 22-001, 22-003, 22-009, 45-302, 45-303, 45-304, 45-305, and 45-306
	REPEAL
TITLE(S) MPP	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

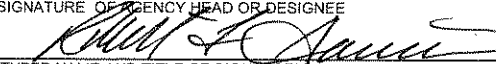
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) December 28, 2009
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) County Welfare Directors Association		

7. CONTACT PERSON Everardo Vaca, Analyst	TELEPHONE NUMBER (916) 657-2363	FAX NUMBER (Optional) (916) 654-3286	E-MAIL ADDRESS (Optional) evaca@dss.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 12/15/09
TYPED NAME AND TITLE OF SIGNATORY Robert Garcia, Chief Deputy Director	

For use by Office of Administrative Law (OAL) only

Amend Section 11-425.122 to read:

11-425 RESPONSIBILITIES OF COUNTY WELFARE DEPARTMENTS 11-425

.1 The county welfare and probation departments' responsibilities shall include, but not be limited to, the following: (Continued)

.12 Recommending the establishment of a new program by a new or existing provider, or a program change which is either more than one RCL greater than the original RCL determination or a program change to RCL 13 or 14. (See Sections 11-402.41, .42, and .43). The recommendation is to include: (Continued)

.122 Provider is capable of effectively and efficiently operating the program.

(a) The county shall use reasonable efforts to determine whether a new or existing Board of Directors member, Executive Director, licensee and Program Administrator were employed in similar capacities in a corporation that has not fully repaid any overpayment of AFDC funds, or was the respondent in a community care license revocation accusation within the past three years. Reasonable efforts shall include contacting the department, Foster Care Rates and Audits Bureau, and the Community Care Licensing Division. If the county determines that one or more of these persons were employed in similar capacities in such a corporation, the county cannot determine that the provider is capable of effective and efficient program operation, unless the county finds that compelling reasons exist to believe that the person or persons so identified are now capable of effective and efficient program operation, and shall include those reasons in the recommendation. (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code, ~~and~~ Chapter 1294, Statutes of 1989, Section 23; and Senate Bill 84, Chapter 177, Statutes of 2007, Section 32.

Reference: Sections 11462(g)(2), 11462(i)(2), ~~and~~ 11462.01(b), and 11466.23, Welfare and Institutions Code.

Amend Section 22-001(c)(2) to read:

22-001 DEFINITIONS

22-001

The following definitions shall apply wherever the terms are used throughout Division 22.
(Continued)

(c) (2) Claimant - The person who has requested a state hearing and is or has been any of the following:

(G) ~~Repealed by Manual Letter No. CFC-07-01, effective 1/24/07.~~

A foster care provider, including group homes and foster family agencies, who request a hearing to challenge a county action to recover an overpayment under Sections 45-304, 45-305, and 45-306, except for overpayments requests made by a county pursuant to Section 45-304.124. (Continued)

Authority cited: Sections 10553, 10554 and 10604, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33.

Reference: Sections 10051, 10613, 10950, 10963, 11209, 11323.6, ~~and~~ 11323.8, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; Sections 6700, 6701, 11425.10, and 11425.60, Government Code; 45 CFR 205.10; 45 CFR 205.10(a)(4)(i)(B); and 45 CFR 255.4(j)(1) and Part 256.

Amend Section 22-003.1 to read:

22-003 RIGHT TO A STATE HEARING

22-003

.1 A state hearing shall be available to a claimant who is dissatisfied with a county action and requests a hearing in the manner set forth below. (Continued)

.15 There is no right to a state hearing regarding overpayments made to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement, or where the county requested voluntary repayment under MPP Section 45-305.231.

Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33.

Reference: Sections 10613, 10950, ~~and~~ 11209, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; 45 CFR 205.10; 45 CFR 235.112(c)(2); 45 CFR 255.4(j)(1) and 256.4(b); and Madrid v. McMahon (1986) 183 Cal. App. 3rd 151, In Re Jennifer G. (1990) 221 Cal App. 3rd 752 and In Re Moriah T. (1994) 23 Cal. App. 4th 1366.

Amend Section 22-009.1 to read:

22-009 TIME LIMIT ON REQUEST FOR A STATE HEARING

22-009

.1 The request for a state hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied.

.11 Except as provided for in Section 45-306.3 ~~If~~ the claimant received an adequate and language-compliant notice of the county action, the request for hearing shall be filed within 90 days after the notice was mailed or given to the claimant. If adequate notice was required but a notice was not provided, or if the notice is not adequate and/or language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed to be a timely hearing request. (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33.

Reference: Sections 10950, ~~and~~ 10951, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code and Morales v. McMahon (1990) 223 Cal App. 3rd 184, 272 Cal. Rptr. 688.

Amend Section 45-302.2 to read:

45-302 PAYMENT (Continued)

45-302

.2 Payment Conditions (Continued)

.23 Child Temporarily Absent

.231 When an AFDC-FC eligible child is temporarily absent from an eligible facility such as for school, work or training program, hospitalization, visiting, vacationing, emergency circumstances, the county shall have the option of making payment to the eligible facility from which the child is absent in order to meet the child's needs. The payment shall be made to one of the payees listed in Section 45-301.1 or 45-301.2.

(a) A child is determined to be temporarily absent when he/she is absent for no more than 14 days in a calendar month.

(ab) (Continued)

HANDBOOK BEGINS HERE

Section 8.3B, Question #7, Child Welfare Policy Manual limits temporary absences to a period not to exceed 14 days:

"The State may provide a full month's title IV-E foster care maintenance payment to the licensed provider if the brief absence does not exceed 14 days and the child's placement continues with the same provider. Otherwise, the State must prorate its claims if the child is absent from the placement for more than a reasonable brief period."

The Administration for Children and Families, Region IX, has determined that a reasonable brief period is no more than 14 days in a calendar month. Below are some examples provided by Region IX that speaks to the issue of temporary absence.

EXAMPLE #1: The youth is in a foster home placement and unexpectedly runs away from the placement on January 24th. The child returns to the same home 14 days later on February 7th. Could the county provide two full months of a foster care payment to the provider?

Because the child was not absent in January for more than 14 days and was not absent in February for more than 14 days the county could provide two full months of foster care payments to the provider.

EXAMPLE #2: The youth is in a foster home placement and unexpectedly runs away from the placement on January 24th and returns to the same home 18 days later on February 11th. In this scenario could the county pay the provider a full month of IV-E maintenance payment for January?

The county could pay the full months of January AND February since the child was not absent more than 14 days in each month.

EXAMPLE #3: The youth is in a foster home placement and runs away from placement (or is hospitalized) from January 2nd to the 14th and then again from January 20th through 27th. In this scenario could the county pay the provider a full month of IV-E maintenance payment for January?

Because the youth was absent from placement for more than 14 days in the calendar month, the county would have to prorate the maintenance payment to reduce the payment by the number of days exceeding 14 days in the calendar month.

HANDBOOK ENDS HERE

.24 (Continued)

Authority cited: Sections 10553, 10554, and 11209, Welfare and Institutions Code.

Reference: Section 7911.1, Family Code; and Sections 361.21, 366, 727.1, 11017, 11056, 11400(f), 11401, 11402, 11403, 11405, 11269, 11466.24, and 16516.5, Welfare and Institutions Code; Section 472(a)(1), Social Security Act.

Amend Section 45-303 to read:

45-303 PAYMENT DELIVERY

45-303

.1 (Continued)

.2 As a condition of Payment Delivery, the county may require a foster care provider to:

.21 Timely report that a child received care from the provider for the entire month.

.22 Timely report the date the child left the provider's care when the provider did not care for the child for the entire month or the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 15 days or more; and

.23 Provide all relevant verifications upon county request.

.3 Where the county has required a provider to comply with Section 45-303.2, failure by the provider to provide the information required may result in the payment being delayed by no later than 15 days after the information is submitted to the county.

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Section 33.

Reference: Section 11466.235, Welfare and Institutions Code.

Amend Section 45-304 to read:

45-304 AFDC-FC OVERPAYMENTS FOR FOSTER FAMILY HOMES, 45-304
~~RELATIVE HOMES, NONRELATIVE EXTENDED FAMILY~~
~~MEMBERS, AND NON-RELATED LEGAL GUARDIANS~~
CARE PROVIDERS - GENERAL

- .1 Overpayment Recovery for Foster Care Providers, including but not limited to, Group Homes, Foster Family Agencies, Small Family Homes, Foster Family Homes, Relative Homes, Nonrelative Extended Family Members, and Non-related Legal Guardians
- .11 An overpayment is any amount of aid paid which a foster care provider received on behalf of a child to which the provider was not entitled. ~~A provider is not entitled to aid where the provider did not care for the child in his or her home for the period of time for which he or she was paid.~~
- .111 Each county must develop and institute a program of internal controls to avoid making overpayments.
- (a) The program may include policies and activities conducted prior to the issuance of payment.
- (b) As a condition of Payment Delivery, Section 45-303, the county may require a foster care provider to:
- (1) Timely report that a child received care from the provider for the entire month.
- (2) Timely report the date the child left the provider's care when the provider did not care for the child for the entire month or the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 15 days or more; and
- (3) Provide all relevant verifications upon county request.
- (c) Where the county has required a provider to comply with Section 45-303.2, failure by the provider to provide the information may result in the payment being delayed by no later than 15 days after the information is submitted to the county.
- .112 If the foster care provider reports, or if the county otherwise determines, that the foster child resided in foster care placement for less than the full month, the county shall prorate the payment, unless Section 45-304.123 applies.

.113 An overpayment does not occur when the county exercises the option to make payment to an eligible facility for an absent child, for a period not to exceed 14 days in a calendar month, in accordance with Section 45-302.231.

.12 The county shall take all reasonable steps necessary to promptly ~~correct and collect any assess whether an overpayments that are discovered by the county on or after January 1, 1999 has occurred.~~

.121 Overpayment assessments shall include discovery of the overpayment and documentation of the overpayment.

(a) Discovery of overpayments. The county shall ensure that a program of internal controls exists and operates on an ongoing basis to discover, in a timely manner, payments made to a foster care provider for which that provider was not eligible to receive.

(1) Methods of discovering the existence of payment errors and determining the amount of the payment error shall be implemented and include, but not be limited to: supervisorial review of payments made; reconciliation between social worker or probation officer and eligibility worker information; and a quality assurance system.

(b) Documenting overpayments. The county shall document the amount of the overpayment, the actual dates of the days overpaid, the date of discovery of the overpayment, the aid code for which the overpayment was made, and include a description of the circumstances that resulted in the payment error.

(c) The overpayment is not identified until it has satisfied the requirements in Section 45-304.5.

.122 The county shall demand and collect overpayments from a Foster Family Home, an approved home of a relative or non-relative extended family member, an approved home of a nonrelated legal guardian, Group Homes, Small Family Homes and Foster Family Agencies for any period of time in which the foster child was not cared for in that home, except as provided in Sections 45-304.123 and 45.304.125.

.1243 The county shall not demand collection of overpayments made to a Foster Family Home, an approved home of a relative or non-relative extended family member, or an approved home of a nonrelated legal guardian, where any of the following conditions exist:

(a) ~~The child was temporarily absent from the provider's home and payment was made to the provider to meet the child's needs pursuant to Section 45-302.231;~~

~~(ba)~~ (Continued)

~~(eb)~~ (Continued)

~~(dc)~~ The provider did not have knowledge of, and did not contribute to, the cause of the overpayments or.

~~(e)~~ The cost of the collection exceeds the amount of the overpayment.

.124 For overpayments described in Section 45-304.123, the county may request that the provider voluntarily return an overpayment, provided that the county informs the provider that the provider has no legal or other obligation to return the overpayment, and that failure to return the overpayment will not result in any adverse action against the provider and the child/children in the home.

.125 The county shall not pursue collection of overpayments made to an overpaid foster care provider where the cost of the collection exceeds the amount of the overpayment.

~~(e)(1)~~

(a) Costs which the county shall consider when determining the cost effectiveness to collect are total administrative and personnel costs, legal filing fees, investigative costs, and any other costs which are applicable.

(b) The county shall have a written debt write-off policy approved by the county Board of Supervisors covering situations including, but not limited to:

(1) Where the debtor cannot be located.

(2) Where the debtor is unable to pay.

(3) Where the costs of further overpayment recovery actions will exceed estimated recovery amounts.

(4) An amount not to exceed \$100.

(c) The county shall maintain adequate documentation supporting its decision to write off an overpayment. Adequate documentation shall include, but not be limited to:

(1) A description of all actions, including the dates of those actions that have been taken to recover the overpayment, and the results from those actions.

- (2) A description of reasonable steps that could be taken in the future to continue recovery efforts, unless it has been determined and documented that the cost of recovery exceeds the collectible amount.
- (3) The costs and benefits of engaging in these further collection actions.
- (4) The basis for the decision to pursue/not pursue collection of the overpayment.
- (5) The date when recovery actions were terminated on the overpayment.
- (6) If Section 45-304.125(b)(4) applies to an overpayment, then adequate documentation shall consist of documenting the amount of the overpayment.

.126 The county shall not demand collection of overpayments made to non profit corporations operating group homes or foster family agencies that are no longer in business or licensed by the department.

- (a) The county shall not initiate a financial or fiscal audit, or any activity that could lead to the establishment of an overpayment of a group home or foster family agency that is no longer in business or licensed by the department, without prior written approval of the department. This provision does not apply to law enforcement activities under the Penal Code.
- (b) The county shall not take any action in furtherance of an existing financial or fiscal audit, or any activity that could lead to the establishment of an overpayment of a group home or a foster family agency that is no longer in business or licensed by the department, without prior written approval of the department. This provision does not apply to law enforcement activities under the Penal Code.

.1227 Nothing in Sections 45-304.12+2, .123 or .124 prevents counties from collecting an overpayment which results from the payment of aid paid pending.

.2 Investigations of Overpayments

.21 When information indicates that an overpayment may have occurred, the county shall take the following actions: (Continued)

- ~~.212 If an overpayment is discovered, determine whether any of the factors in Section 45-304.121 preclude overpayment recovery. Calculate the amount of the overpayment;~~
- ~~.213 If none of the factors in Section 45-304.121 preclude recovery, calculate the overpayment; Determine whether any of the factors in Section 45-304.123 or .124 preclude overpayment recovery. If none of the factors in Section 45-304.123 or .124 preclude recovery then;~~
- ~~.214 (a) Determine from whom the overpayment may be recovered (see Section 45-304.3);~~
- ~~(b) Comply with the requirements in Section 45-305.~~
- ~~(c) The county may seek voluntary collection consistent with Section 45-305.231.~~
- ~~.214 If after performing the actions required under Section 45-305, full recovery of the overpayment is not achieved, then the county shall determine whether to pursue collection of the overpayment as specified in Section 45-304.125.~~
- ~~.215 Determine the appropriate recovery method (see Section 45-305) and the amount to be recovered.~~

.3 Overpayment Recoupment (Continued)

.32 (Continued)

HANDBOOK BEGINS HERE

- ~~.321 Section 45-304.32 does not prohibit those overpayment collection procedures detailed in Section 45-305.22 or .23.~~

HANDBOOK ENDS HERE

- .33 For overpayments made to group homes and foster family agencies, an offset to the administrative portion of any subsequent payments shall be used to recover the amount of the overpayment. See Section 45-305 for offset methodology.

.4 Limitations on Recoupment of Overpayments

- .41 A county shall not collect interest on the repayment of an overpayment unless Section 45-305.33 applies.

.42 A county shall not ~~notify a provider or institute~~ initiate overpayment recovery procedures where it has been more than a year since the initial determination of an overpayment after one year from the date the county discovers the overpayment.

.421 The county shall continue to recover an overpayment after one year from the date the county discovers the overpayment where the overpayment recovery was initiated within one year of the date the county discovered the overpayment.

HANDBOOK BEGINS HERE

~~.421~~ The initial ~~determination~~ discovery of the overpayment may occur more than a year after the actual overpayment occurred and recovery shall be sought unless prohibited by Section 45-304.123. The date of ~~determination~~ discovery is controlling, not the date of the actual overpayment.

HANDBOOK ENDS HERE

.422 This section does not prohibit the county from entering into voluntary or involuntary repayment schedules which last longer than a year from the date of the initial ~~determination~~ discovery of the overpayment.

.423 (Continued)

.5 County Identification and Remittance of Overpayments (See Section 45-304.12)

.51 If the overpaid provider does not request a review of the county overpayment determination, the overpayment shall be identified two (2) days after the date the overpaid provider's time frame to request a review has elapsed.

.52 If the overpaid provider requests review of the county's overpayment determination (under Section 45-306), the date the overpayment is identified shall be the date the overpaid provider exhausts administrative due process (under Section 45-306).

.53 The county shall, no later than 20 calendar days after the end of the month in which the overpayment was identified, make an aid claim adjustment in an amount equal to 60 percent of the federal share of the overpayment amount for all overpayments identified other than overpayments specified in Sections 45-304.122, .123 and .124.

.54 The county shall not be required to remit the federal share of any overpayment that is uncollectible pursuant to statute or court order, as specified below:

.541 Overpayments which are uncollectible under Section 45-304.123.

.542 Overpayments which are uncollectible by operation of Section 45-304.125(b)(4).

.543 Overpayments which are uncollectible under Section 45-304.125, provided that the county maintains adequate documentation as described in Section 45-304.125(c).

.544 Overpayments which are uncollectible under Section 45-304.126, provided that the county complies with Section 45-304.126(a) and (b).

.55 The county shall report to the department all identified legally uncollectible overpayments and uncollected overpayments due to operation of Sections 45-304.123, .124 and .125 on a monthly basis.

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33.

Reference: Sections 11400, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; Section 338 Code of Civil Procedure; Section 472(a)(1), Social Security Act.

Amend Section 44-305 to read:

45-305 COLLECTIBLE AFDC-FC OVERPAYMENTS FOR FOSTER FAMILY HOMES, RELATIVE HOMES, AND NON-RELATED LEGAL GUARDIANS- CARE PROVIDERS; METHODS OF OVERPAYMENT RECOVERY 45-305

.1 Using ~~an appropriate county~~ the Statewide developed Notice of Action form NA 1261 (6/09), which is incorporated by reference, the county shall inform the provider of the overpayment and inform the provider that he or she is required to repay the overpayment. This form shall not be used in connection with an overpayment that the provider has no legal obligation to repay. The Statewide developed Notice of Action form NA 1261 shall also notify the provider ~~that the provider can either voluntarily repay the overpayment or that an involuntary overpayment collection procedure will be instituted against the provider.~~ of:

.11 The amount of the overpayment calculated by month;

.12 The date or dates the overpayment was made, and the date the overpayment was discovered by the county;

.13 The program in which the overpayment was made, and the reason or cause for the overpayment;

.14 Voluntary Repayment Options and Procedures, including voluntary grant offset;

.15 Involuntary Repayment procedures and related consequences if voluntary repayment is not agreed to or entered into;

.16 The provider's right and time frame to request an informal hearing pursuant to MPP Section 45-306; and

.17 The provider's right and time frame to request a State hearing pursuant to MPP Division 20.

.42 Voluntary Repayment Procedures

.21 A provider may voluntarily agree to repay an assessed overpayment in the following order of priority:

.211 Voluntary Lump Sum Repayment, MPP Section 45-305.22.

.212 Voluntary Repayment Agreement, MPP Section 45-305.23.

.213 Voluntary Grant Offset, MPP Section 45-305-24.

.22 Voluntary Lump Sum Repayment

.221 A provider may voluntarily repay an assessed overpayment by making a lump sum payment to the county on or before the date the provider and county have agreed repayment would be received.

.44 23 Voluntary Repayment Agreement

.44 231 If a provider is willing agrees to voluntarily repay the assessed overpayment, the county and the provider shall sign a written repayment agreement with the provider indicating that includes the amount of the overpayment, and delineating the terms of repayment, including the repayment schedule, and the consequences for failure to comply with the terms of the voluntary repayment agreement.

(a) The agreement shall provide that the provider has sufficient funds to provide adequate care and supervision to all children in care after payment.

(b) The agreement shall provide that during the period the agreement is in effect it is the responsibility of the provider to timely inform the county of circumstances under which continued payment under the voluntary repayment agreement may result in insufficient funds to provide adequate care and supervision to all children in care.

(c) Consequences for failure to comply with the terms of the voluntary repayment agreement may include, but are not limited to, restrictions on current and future placements, involuntary repayment, and monetary damages that relate to increased administrative costs incurred by the county due to the provider's non-compliance.

(d) The agreement shall provide that by agreeing to a voluntary repayment the provider is waiving rights to appeal the overpayment determination and the amount of the overpayment, pursuant to MPP Section 22-003.15.

HANDBOOK BEGINS HERE

MPP Section 22-003.15 provides:

"There is no right to a state hearing regarding overpayments made to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement, or where the county requested voluntary repayment under MPP Section 45-305.231."

HANDBOOK ENDS HERE

(e) The agreement can be amended only by written consent of both parties.

.424 Voluntary Grant Offset

~~.1241~~ Voluntary grant offset should be explained by the county to those providers where the provider is still providing foster care services to the child for whom the overpayment was assessed. A voluntary grant offset is not available where the provider is only providing services to a different foster child(ren) than the child for whom the overpayment was assessed. If the provider agrees to a voluntary grant offset, the provider and the county shall sign a written voluntary grant offset agreement that includes the amount of the overpayment, the amount to be offset, and the duration of the offset.

- (a) ~~If the recipient offers to repay the overpayment by foregoing a portion of a grant for the child for whom the overpayment was assessed, the county shall obtain, in writing, an agreement to repay. The agreement shall provide that the provider has sufficient funds to provide adequate care and supervision to all children in care after deduction of grant offset.~~
- (b) ~~If the recipient agrees to a grant offset, at no time shall t~~The amount deducted from the child's current grant be no more than 10 percent of the child's total grant.

HANDBOOK BEGINS HERE

Example: (4) Provider Jones has three foster children in her home, Jenny, Johnny, and Joe. An overpayment in the amount of \$400 is assessed for Joe. Joe's monthly payment is \$408. The provider agrees to a voluntary grant offset. \$40 is subtracted form Joe's monthly payment, for a total monthly payment of \$368, for 10 months. Neither Jenny nor Johnny's payments are reduced.

\$408 (monthly grant)
x .10% (maximum)

\$40 (amount to be deducted from monthly grant)

\$408 (monthly grant)
- \$ 40

\$368 (new monthly grant for 10 months)

HANDBOOK ENDS HERE

- (c) Voluntary grant offset may be applied only to the grant of a child for whom the overpayment was assessed. If the ~~recipient~~ provider agrees to a grant offset, at no time shall any amount be deducted from the grant of a child other than the child for whom the overpayment was assessed.

HANDBOOK BEGINS HERE

Example: (1) Provider Jones has three foster children in her home, Jenny, Johnny, and Joe. An overpayment in the amount of \$400 is assessed for Fred who had lived in Provider Jones' house last month. Grant adjustment is not available.

HANDBOOK ENDS HERE

- (d) The offset agreement shall provide that during the period the offset is in effect it is the responsibility of the provider to timely inform the county of circumstances under which continued payment offset may result in insufficient funds to provide adequate care and supervision to all children in care.
- (e) The agreement shall provide that by agreeing to a voluntary grant offset the provider is waiving rights to appeal the overpayment determination and the amount of the overpayment, pursuant to MPP Section 22-003.15.

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MPP Section 22-003.15 provides:

"There is no right to a state hearing regarding overpayments made to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement, or where the county requested voluntary repayment under MPP Section 45-305.231."

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- (f) The agreement can be amended only by written consent of both parties.

.23 Involuntary Repayment Procedures

.231 Involuntary repayment procedures shall only be used when a provider has refused to enter a voluntary repayment agreement or has failed to comply with the terms of a voluntary repayment agreement that is based on a legally collectible overpayment.

.232 Grant Adjustments

.2321 Grant adjustments shall only be used where the provider is still providing foster care services to the child for whom the overpayment was assessed. An involuntary grant offset is not available where the provider is only providing services to a different foster child(ren) than the child for whom the overpayment was assessed.

- (a) If the overpayment is to be recovered by grant adjustment, the county shall deduct no more than 5 10 percent of the total grant amount each month.

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Example: (4) Provider Jones has three foster children in her home, Jenny, Johnny and Joe. An overpayment in the amount of \$400 is assessed for Joe. Joe's monthly payment is \$408. The provider refuses to enter into a voluntary repayment agreement; the county institutes an involuntary grant adjustment. ~~\$20 40~~ is subtracted from Joe's monthly payment, for a total monthly payment of \$388 368. For ~~20 10~~ months. Neither Jenny nor Johnny's payments are reduced.

$$\begin{array}{r} \$408 \text{ (monthly grant)} \\ \times \quad .05 \text{ 10\% (maximum)} \\ \hline \$ \text{ 20 40 (amount to be deducted from monthly grant)} \\ \\ \$408 \text{ (monthly grant)} \\ - \quad \$ \text{ 20 40} \\ \hline \$ \text{ 388 368 (new monthly grant for 20 10 months)} \end{array}$$

HANDBOOK ENDS HERE

- (b) At no time shall any amount be deducted from the grant of a child other than the child for whom the overpayment was assessed.

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Example: (4) Provider Jones has three foster children in her home, Jenny, Johnny and Joe. An overpayment in the amount of \$400 is assessed for Fred who had lived in provider Jones' house last month. Grant adjustment is not available.

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- (c) The county shall reduce the grant adjustment amount if the county determines that the reduction is necessary to ensure that sufficient funds exist to provide adequate care and supervision to all children in care after the deduction.

- (d) The grant adjustment shall provide that during the period the offset is in effect it is the responsibility of the provider to timely inform the county of circumstances under which continued payment offset may result in insufficient funds to provide adequate care and supervision to all children in care.

.33 Interest on Overpayments

.331 The county shall collect interest on overpayments in circumstances in which the overpaid provider has either failed to enter into a voluntary repayment agreement, or has failed to comply with the terms of a voluntary overpayment agreement, unless:

- (a) An overpayment was made to a foster family home, an approved home of a relative, an approved home of a nonrelative extended family member, or an approved home of a nonrelative legal guardian, for any period of time in which the foster child was not cared for in that home and none of the following conditions existed:

- (1) The child was temporarily absent from the home and payment was made to the provider to meet the child's needs; or
- (2) The overpayment was exclusively the result of county administrative error; or
- (3) The provider did not have knowledge of, and did not contribute to the cause of the overpayment.

- (b) Interest collection would cause a financial hardship for the provider to provide adequate care and supervision to all children in care.

.34 Unless otherwise provided for in this section, the county shall collect group home provider and foster family agency overpayments in accordance with the procedures established for group home overpayments pursuant to MPP Section 11-402.66. For purpose of this section, the term "county" shall be substituted for the word "department" wherever that term appears in MPP Section 11-402.66.

.23 Demand for Repayment

~~Where voluntary and involuntary repayment procedures are not available, the county shall demand repayment of any amount not recovered by grant adjustment, or otherwise repaid, using an appropriate Notice of Action form.~~

~~.24~~ .35 Civil Judgment

If the provider has failed to comply with a voluntary repayment procedures and/or agreement, a demand for repayment, and a grant ~~adjustment shall not be used~~ offset is not available as the provider is no longer providing services to the child for whom the overpayment was assessed, the county shall, unless the costs exceed the amount of the overpayment:

.351 ~~Refer~~ the case to the appropriate county official for action on a civil judgment.

~~.241~~ .352 Record ~~An~~ abstract of civil judgment ~~shall be recorded~~ pursuant to Section 674, Code of Civil Procedure, in any county in which the provider or former provider owns real property.

~~.242~~ .353 ~~The county shall take~~ all appropriate actions pursuant to Section 681 et seq., Code of Civil Procedure, to execute the judgment.

.354 If the county does not pursue civil judgment because the cost for the above described actions exceed the amount of the overpayment, the county shall comply with the documentation requirements set forth in MPP Section 45-304.125(c).

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33.

Reference: Sections 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code.

Amend Section 45-306 to read:

45-306 INFORMAL AND FORMAL HEARING PROCEDURES

45-306

This section applies only to the appeal rights of providers subject to an collectible overpayment assessment pursuant to Section 45-304 and Section 45-305. This informal and formal hearing processes ~~is~~ are not available to providers, who have ~~defaulted on~~ entered into a voluntary repayment ~~schedule agreement~~, to contest the overpayment determination or the overpayment amount.

- .1 The informal hearing process shall not ~~interfere with~~ preclude the provider's right to a state hearing.
- .2 Counties shall provide informal hearings in accordance with the following procedures:
 - .21 Counties must ~~notify~~ provide written notice to the provider of the availability of an informal hearing process ~~at the same time when~~ the county notifies the provider of the overpayment. ~~The right to an informal hearing is in addition to the right to a state hearing. The notice to the provider must inform the provider that he or she must request either an informal hearing or a formal hearing within 30 days of the receipt of the notice.~~ The county shall send the Statewide form NA 1261 (6/09), to the provider.
 - .22 An informal hearing shall be provided by the CWD to the provider only when the provider has requested an informal hearing ~~in writing~~ no later than 30 calendar days after the ~~overpayment notice~~ Statewide form NA 1261 was mailed by the county to the provider.
 - .23 The informal hearing shall be conducted by an employee designated by the county welfare department director. The designated employee shall be ~~at least one supervisory step above the employee which made the initial overpayment determination.~~ The designated employee shall not have been involved in knowledgeable in the subject area, and shall not be the person who made the initial overpayment determination.
 - .24 The informal hearing shall be ~~permitted to be~~ held in an office or facility of the CWD. If ~~necessary~~ agreed upon by the provider and the county, the informal hearing may be held elsewhere or conducted by telephone. (Continued)
 - .26 The informal hearing shall be limited to consideration of the correctness of the initial overpayment determination and whether any of the factors in Section 45-304.1243 bar recovery. The county ~~should~~ may also discuss the methods of overpayment recovery with the provider and attempt to enter into a voluntary repayment agreement, where appropriate.

- .27 After the hearing, the county employee who conducted the informal hearing shall prepare a Notice of Action letter which contains the decision on each issue considered at the informal hearing, and identification of the regulations which support the written decision and mail the Notice of Action letter to the provider. The Notice of Action letter must inform the provider that he or she can appeal the informal hearing decision at a formal state hearing.

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Example: Through implementation of procedures identified in Section 45-304.1, the county determines an overpayment was made to a group home provider on January 2nd. The county implements procedures identified in Section 45-304.2 and proceeds to Section 45-305 for collection procedures.

The county provides written notification to the provider of the overpayment in accordance with Section 45-305.1. **Hearing procedures identified in Section 45-306 only apply to the appeal rights of providers subject to collectible overpayment assessments pursuant to Section 45-304 and Section 45-305.**

The county provides appeal rights at the time the county notifies the provider of the overpayment. The provider may or may not request an informal hearing within 30 calendar days of the date the notice to the provider was mailed.

If the provider does not request an informal hearing within 30 calendar days of the date the notice to the provider was mailed, the overpayment determination is sustained upon the 91st day, and therefore identified and the federal share of the overpayment must be repaid by the county, as identified in Section 45-304.53.

If the provider requests an informal hearing within 30 calendar days of the date the notice to the provider was mailed, the county must mail or deliver to the provider a written notice of the time and place of the informal hearing. The hearing shall be conducted in accordance with Sections 45-306.23, .24, .26, and .27.

Example: Overpayment discovered on January 2nd; notice to provider mailed on January 3rd; the county receives a request for an informal hearing from the provider on January 14th; the county schedules the informal hearing for January 31st; the county mails the informal hearing date and time to the provider on or before January 23rd.

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- .3 If a provider requests an informal hearing, the 90-day period to request a formal hearing under MPP Section 22-009.11 shall be suspended. The 90-day period to request a formal hearing shall start when the county issues an informal hearing decision, or when the provider either withdraws their request for the informal hearing, or fails to appear for the informal hearing, whichever occurs first.

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Example #1: A provider requests an informal hearing therefore the 90-day period to request a formal hearing is suspended.

Example #2: A provider requests and receives an informal hearing. The county provides a written decision mailed to the provider as identified in Section 45-306.27. The provider has a right to request a formal hearing of the written decision within 90 days.

Informal hearing held on January 31st. County prepares a letter identifying the decisions on each issue considered at the informal hearing in accordance with Section 45-306.27 and mails the decision letter on February 8th. The provider receives the letter and has 90 days from February 8th to request a formal hearing. The county must receive a request for a formal hearing from the provider no later than May 7th.

Example #3: A provider requests an informal hearing and subsequently withdraws the request for the informal hearing. The date the provider withdraws the request for the informal hearing begins the 90-day period to request a formal hearing.

The provider was scheduled for an informal hearing on January 31st. The provider withdrew the request for an informal hearing on January 28th. The county must receive a request for a formal hearing from the provider no later than April 26th.

Example #4: A provider requests an informal hearing and fails to appear on the scheduled date and time. The date the provider fails to appear for the scheduled informal hearing begins the 90-day period to request a formal hearing.

The hearing is scheduled for January 31st and the date and time notice is mailed no later than 7 days prior to the hearing by the county. The provider fails to appear for the informal hearing. The county must receive a request for a formal hearing from the provider no later than April 29th.

HANDBOOK ENDS HERE

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Section 33.

Reference: Sections 11466.235 and 11466.24, Welfare and Institutions Code.

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. Senate Bill (SB) 84, Chapter 177, Statutes of 2007, enacted legislation to amend and adopt, on an emergency basis, regulations to require counties to remit payment of the federal share for overpayments. These changes are necessary to clarify and implement processes and procedures to comply with federal reporting requirements for overpayments of Title IV-E foster care and adoption assistance overpayments. Counties are held harmless for this repayment until emergency regulations are filed.
2. This legislation mandates that the CDSS modify its regulations for overpayments of Title IV-E foster care and adoption assistance overpayments on an emergency basis. Specifically, Welfare and Institutions Code sections 11466.23(d) and 11466.235(c) state:

"(1) The department [CDSS] shall modify existing regulations and adopt new regulations to implement this section by December 31, 2008. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department, in consultation with the CDWA, may adopt emergency regulations to implement this section.

"(2) The adoption of emergency regulations ... shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare..."

Accordingly, CDSS has modified the Manual of Policies and Procedures – Division 45 AFDC-FC (Foster Care), Sections 45-302, 45-303, 45-304, 45-305 and 45-306; Division 11 (Foster Care Audits and Rates), Section 11-435; and, Division 22 (State Hearing and Request for Review), Sections 22-001, 22-003 and 22-009. The time frame for modification of these regulations was not met by December 31, 2008 due to several factors: 1) the collaborative process required agreements through lengthy discussion; 2) the time frame for developing the emergency regulations was an ambitious undertaking due to reviewing and amending county and state processes and the different fiscal systems that needed review and modification; 3) the lack of human resources to adequately implement within the time frame specified due to loss of positions and vacancies within positions; and, 4) the lack of staffing with appropriate knowledge in program and regulation development.

3. The proposed regulatory and handbook changes are being made to implement Senate Bill 84. These changes are necessary to clarify and implement processes and procedures to comply with federal reporting requirements for overpayments of Title IV-E foster care and adoption assistance overpayments.

The CDSS was informed by the Federal Department of Health and Human Services (DHHS) that it was out of compliance with the Improper Payments Information Act of 2002 and must repay all identified overpayments of foster care and adoption assistance funds. Additionally, the CDSS's practice of repaying overpayments when collections were made was not acceptable to the federal government. Accordingly, the CDSS worked with County Welfare Directors Association (CWDA) and county representative to implement new regulations as well as preventative measures and best practices to reduce overpayments.

The proposed regulatory changes meet the "authority," "clarity," "consistency," "necessity," "nonduplication," and "reference" standards of the Administrative Procedure Act (APA), Government Code section 11349, subsections (a), (b), (c), (d), (e), and (f), the requirements of style pursuant to Government Code section 11343.1, and the principles of "plain English" rule drafting. Non-substantive and substantive rewording of sections has been undertaken to make them more concise and user-friendly. Sections have been renumbered to accommodate regulatory changes. Handbook ensures that regulations are consistent with statute and provides a reference for counties. Authority and reference citations are amended to reflect relevant statute.

Without these emergency regulations, the CDSS will remain out of compliance with federal requirements for oversight and repayment of federal funds, in a manner required through State legislation enacted by SB 84.

4. The CDSS and the CWDA have collaborated to develop these new regulations as well as preventative measures and best practices to reduce overpayments. From the period of October 2003 to February 2008, the CDSS has repaid a total of \$12.3 million dollars in federal share of overpayments identified as a result of county errors, state audits and Los Angeles County compliance audits. The majority of the overpayments were county errors made to providers. The implementation of these regulations will place the appropriate burden on counties to implement best practices and develop local oversight functions to reduce the occurrence of overpayments through county errors, thereby reducing the county's and the State's liability for repayment of the federal share of the identified overpayments. Additionally, statute prohibits the State from recovering the county share of overpayments until these regulations are enacted. Failure to enact these regulations on an emergency basis will delay the State's ability to recover the county share of overpayments, resulting in a loss of General Fund dollars.
5. It is anticipated there will be no opposition because of the collaborative effort between CDSS and CWDA to develop these regulations and the processes/procedures to eliminate or reduce overpayments through identification of best practices.
6. Emergency regulations were filed with the Secretary of State and became effective on July 1, 2009. The public hearing was held on August 12, 2009. Due to the complexity of the testimony received, further review of the regulations was necessary. The analysis of the testimony received and the review of the regulations has been time consuming. Once the analysis of the testimony and the review of the regulations were completed, it was deemed

necessary to amend the emergency regulations necessitating a 15-day renote. Time has passed and the Department is not able to complete the regulatory process in time to file the Certification of Compliance timely. The readoption is necessary to complete the regulatory processes mandated by the Government Code. The readoption is also necessary to implement federal and state requirements to comply with the Federal Improper Payments Information Act of 2003, clarifying and implementing processes and procedures to comply with the federal reporting requirements for overpayments of Title IV-E foster care and adoption assistance overpayments. Counties were held harmless for this repayment until emergency regulations were filed. Lack of these regulations may result in the delayed release of information which the Legislature has deemed to be public and of great importance.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In June 2006, the CDSS was informed that the State was not in compliance with Aid to Families with Dependent Children-Foster Care (AFDC-FC) overpayment recoupment that requires the federal share of overpayments identified through state program audits, county compliance audits, and county overpayment errors be returned immediately once the overpayment has been identified. The past practice at CDSS, based on a federal financial management cost principal of Office of Management and Budget (OMB) Circular A-87, had been to repay the federal share of overpayments upon recoupment from foster care providers. However, the Department of Health and Human Services (DHHS) Region IX advised CDSS that it was out of compliance with the federal Improper Payments Information Act (IPIA) and that it had misinterpreted the federal law. Moreover, DHHS Region IX advised CDSS that it is responsible for crediting the federal government the full amount of the federal share of Title IV-E funds upon identification following the completion of due process, regardless of whether the state or county collects or has the ability to collect overpayments. Therefore, CDSS informed the DHHS Region IX that it would take immediate steps to comply with identifying, tracking, and reporting overpayments and remitting the federal share as required.

In October 2006, CDSS began a series of workgroup meetings with the County Welfare Director's Association (CWDA) and county representatives to address statewide concerns with identifying, tracking, and reporting overpayments, and identify current and potential best practices to prevent and reduce overpayments. Additionally, current state statutes and regulations that prohibit collection of overpayments, information system problems for identifying overpayments, and a need for clarification of policy and oversight for overpayments were identified as issues. Counties were advised to begin tracking identified overpayments regardless of the ability to collect.

Based on the county overpayment lists submitted for specified retroactive periods, CDSS has identified and repaid to date approximately \$12.3 million dollars as the federal share of identified overpayments from county errors, county compliance audits, and state program audits. The DHHS Region IX demanded repayment of any outstanding federal share of overpayments; otherwise, it would begin the formal disallowance process for the federal share of Title IV-E funds prospectively. In response, CDSS made necessary modifications to the county claim form to allow counties to make adjustments for county overpayments beginning with the March 2008 claim month.

Senate Bill (SB) 84 (Chapter 177, Statutes of 2007) contains legislative language that statutorily requires CDSS to collaborate with CWDA to develop and implement processes, procedures, and develop regulations that will ameliorate systemic problems with identifying, tracking, reporting, collecting, and remitting the federal share of Title IV-E foster care and AAP overpayments. The workgroup identified current issues with state statute and regulations that preclude counties from notifying and recovering overpayments; identified possible best practices to reduce or eliminate overpayments; identified issues with due process and appeal rights of providers; identified problems associated with Adoption Assistance Program (AAP) payments, that may occur only every two years when AAP agreements are renegotiated and may affect the timely discovery of an overpayment; defined "uncollectible debt;" and identified the appropriate roles of both counties and the state in recouping overpayments including those identified through state program audits.

Pursuant to SB 84, CDSS is required to repay the federal share of all overpayments identified by counties until such time as CDSS promulgates regulations, or by December 31, 2008, thus, relieving counties of the responsibility to pay back overpayments.

COST ESTIMATE

1. Costs or Savings to State Agencies: Currently, the State incurs all costs for foster care overpayments but pursuant to Welfare and Institutions Code Section 11466.23, counties will share in the costs resulting in savings to the State. Beginning in July 1, 2009, the State's estimated annual savings will be \$1.5 million.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: Under Welfare and Institutions Code Section 11466.23 counties will be required to share in the costs of uncollectable overpayments. Beginning in July 1, 2009, counties estimated annual cost will be \$1.5 million.
4. Federal Funding to State Agencies: The estimated annual Federal savings adjustment for incurred overpayments is \$2.6 million.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate on local agencies but not on school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California. Any local costs associated with this order can be avoided through local agency compliance with State rules requiring accurate payments to foster care providers.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553 and 10554 and SB 84, Chapter 177, Statutes of 2007, Sections 32 and 33. Subject regulations implement and make specific Welfare and Institutions Code Sections 11466.23, 11466.235, and 11466.24.